

## Message Text

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TO USMISSION USUN NEW YORK

C O N F I D E N T I A L STATE 041040

FOR ROBERT ROSENSTOCK USUN LEGAL DIVISION

FOLLOWING SENT ACTION TO SECSTATE FEB 17, 1976 FROM SAN JOSE

QUOTE C O N F I D E N T I A L SAN JOSE 0806

E.O. 11652: GDS

TAGS: PFOR, CS

SUBJECT: POSSIBLE EXTRADITION:

CHARLES GRAYBEAL AND JAMES D. PENNINGTON

1. BEGIN SUMMARY: EMBASSY DOUBTS THAT EXTRADITION REQUEST FOR GRAYBEAL AND PENNINGTON WOULD BE GOOD VEHICLE TO TEST EXTRADITION LAW AGAINST FRAUD STATUTE AND EXTRADITION TREATY. REASONS: TIME FACTOR AND WHAT OPPOSITION MIGHT LEARN FROM OUR EFFORTS THAT WOULD BE HELPFUL TO THEM IN SUBSEQUENT VESCO EXTRADITION. ALSO, SUBJECTS MAY BE DEPORTED BY GOCR ANYWAY. USG FAILURE TO BRING AT LEAST SIMULTANEOUS EXTRADITION REQUESTS FOR SUBJECTS AND VESCO WOULD BE MISINTERPRETED HERE AS ANOTHER INDICATION OF REAL LACK OF U.S. INTEREST IN EXTRADITING VESCO. ALL EMBASSY LEGAL JUDGMENTS IN THIS MESSAGE SHOULD BE REVIEWED BY LOCAL COUNSEL; AUTHORIZATION TO CONTRACT FOR SAME IS REQUESTED. END SUMMARY.

2. AS OF FIRST WEEK FEBRUARY GRAYBEAL AND WIFE WERE IN COSTA RICA. GRAYBEAL'S WIFE'S PASSPORT WAS CONFISCATED  
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BY CONSULATE ON FEBRUARY 5, 1976 (SAN JOSE 616) AND

IS BEING RETURNED TO HER PER DEPARTMENT INSTRUCTIONS (STATE 35225). ALSO, SHE WAS GIVEN LETTER FOR CHARLES GRAYBEAL INFORMING HIM OF HIS FLORIDA INDICTMENT, AND ASKING HIM TO SURRENDER HIS PASSPORT TO THE CONSULATE.

3. EMBASSY BELIEVES PENNINGTON IS IN COSTA RICA AS WELL. INVESTIGATION CONTINUES.

4. GRAYBEAL AND PENNINGTON WERE INCLUDED IN LIST GIVEN IN NOVEMBER BY AMBASSADOR AND LEGATT TO PRESIDENT ODUBER OF FUGITIVES FROM U.S. JUSTICE WHO ARE IN COSTA RICA. PRESIDENT PROMISED TO HAVE EACH CASE LOOKED INTO WITH VIEW TO DEPORTING AS MANY AS POSSIBLE TO U.S. EMBASSY HAS RECEIVED INDICATIONS THAT GOCR ACTION TO DEPORT SOME ON THIS LIST IS PROCEEDING. THUS POSSIBILITY EXISTS THAT TWO SUBJECTS MAY BE DEPORTED TO U.S. AT SAME TIME WE RECOGNIZE THAT WITH THEIR MONEY, THEIR ABILITY TO GET GOOD LEGAL COUNSEL, AND THEIR CONNECTIONS, THEY MAY WELL AVOID BEING DELIVERED UP BY THE GOCR.

5. IN TERMS OF TACTICS EMBASSY DOUBTS THAT EXTRADITION REQUEST FOR PENNINGTON AND GRAYBEAL WOULD BE AN ESPECIALLY HELPFUL VEHICLE FOR TESTING COSTA RICAN EXTRADITION LAW AND FRAUD STATUTE IN VESCO CASE. AS DEPARTMENT IS AWARE, EXTRADITION CASES HAVE TENDENCY TO BE DRAWN OUT AFFAIRS; IT IS QUITE POSSIBLE THAT BY SUMMER, 1977, THIS CASE STILL MIGHT NOT BE DECIDED, AND THE EXPERIENCE GLEANED FROM IT NOT HELPFUL (VESCO WOULD BY THAT TIME PROBABLY HAVE BECOME A COSTA RICAN CITIZEN.) ALSO, WE CAN BE SURE THAT VESCO AND HIS LEGAL TALENT WOULD BE WATCHING SUCH A CASE ESPECIALLY CLOSELY (VESCO MAY EVEN BANKROLL THE DEFENSE OR PROVIDE LAWYERS). THEY COULD BENEFIT FROM INSIGHT INTO HOW THE CASE DEVELOPS AS WELL AS WE--AND PERHAPS MORE SO.

6. THUS EMBASSY DOES NOT REPEAT NOT FAVOR HOLDING UP A VESCO EXTRADITION REQUEST IN ORDER TO SEE HOW A GRAYBEAL/PENNINGTON EXTRADITION REQUEST FARES. CONFIDENTIAL

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MOREOVER, WE DO NOT BELIEVE THAT USG SHOULD GO FORWARD WITH ANY OTHER EXTRADITION REQUEST IN COSTA RICA PRIOR TO VESCO'S--ESPECIALLY FOR A FRAUD BY WIRE CHARGE SIMILAR TO VESCO'S. FOR REASONS IN PARAGRAPH 5 ABOVE, WE COULD LOSE MORE THAN WE MAY GAIN--ESPECIALLY TIME. ACCORDINGLY, EMBASSY BELIEVES THAT IF WE HAVE A GOOD CASE WE SHOULD GO FORWARD WITH A VESCO EXTRADITION REQUEST AS SOON AS POSSIBLE. EMBASSY FAVORS SEPARATE AND SIMULTANEOUS EXTRADITION REQUESTS

FOR VESCO AND ASSOCIATES; OUR HOPE IS THAT IF WE ARE NOT SUCCESSFUL WITH VESCO WE MAY STILL HAVE CHANCE ON ASSOCIATES.

7. THERE ARE ADDITIONAL CONSIDERATIONS. FAILURE TO BRING AN EXTRADITION REQUEST FOR VESCO AT LEAST AT SAME TIME THAT ONE IS PRESENTED FOR GRAYBEAL AND PENNINGTON ON SIMILAR CHARGES FUELS THE NOTION, WHICH UNFORTUNATELY EXISTS HERE, THAT THE U.S. REALLY IS NOT INTERESTED (NOR WAS EVER INTERESTED) IN EXTRADITING VESCO. IN SHORT, IF WE HAVE SUCH A GOOD CASE, THE QUESTION IN THE MINDS OF INFORMED COSTA RICANS WILL BE WHY NOT GO WITH IT? ALSO, EMBASSY FEELS THAT IF THE USG TAKES ON THE CONSTITUTIONALITY OF THE 1974 EXTRADITION LAW, WE SHOULD DO IT WITH OUR PRINCIPAL MAJOR CASE.

8. A DECISION ON A GRAYBEAL/PENNINGTON EXTRADITION REQUEST SHOULD BE MADE ON ITS MERITS--KEEPING IN MIND THAT WE HAVE ALREADY PRESENTED THE GOVERNMENT WITH A LIST OF U.S. FUGITIVES INCLUDING THESE TWO. FOR TIME BEING, EMBASSY RECOMMENDATION IS TO HOLD UP ON GRAYBEAL/ PENNINGTON EXTRADITION TO GIVE GOCR CHANCE TO MAKE GOOD ON ITS INTENTIONS.

9. EMBASSY HAS RESERVATIONS ABOUT DEGREE OF RELIANCE ON TREATY PROVISION (ARTICLE XIII) FOR ASSISTANCE OF COSTA RICAN LEGAL OFFICIALS FOR VESCO CASE, AND CERTAINLY WOULD WANT INDEPENDENT LEGAL COUNSEL IN ANY EVENT. WE COULD PROBABLY USE GOCR LEGAL OFFICIALS FOR GRAYBEAL/PENNINGTON. HOWEVER, WE ARE NOT CONVINCED THAT USE OF COSTA RICAN LEGAL OFFICIALS WOULD NECESSARILY BIND THEM TO THE LEGAL OPINIONS WE HAVE RECEIVED FROM THE COSTA RICAN ATTORNEY GENERAL. REASON FOR THIS VIEW IS BOTH CONFIDENTIAL

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DELICACY OF CASE IN POLITICAL TERMS HERE AND FAR REACHING ARM OF VESCO IN THINGS COSTA RICAN--NOT LEAST OF WHICH IS ATTORNEY GENERAL'S OFFICE. ALSO, IT SHOULD BE RECALLED THAT ATTORNEY GENERAL TOSSI, WHO BY HIS PAST ACTIONS HAS PROVEN THAT HE IS NO FRIEND OF THE U.S., IS POLITICALLY BEHOLDEN TO FIGUERES.

10. WITHOUT GOING TO A COSTA RICAN LAWYER, EMBASSY NOT ABLE TO RESPOND TO QUESTION OF WHETHER VESCO CAN INTERFERE IN EXTRADITION PROCEEDINGS AGAINST GREYBEAL AND PENNINGTON IN ANY WAY, SUCH AS ON BASIS OF BEING INTERESTED OR AFFECTED PARTY.

11. IT IS EMBASSY'S STRONG VIEW THAT DISCUSSION OF ALL ABOVE SUBJECTS HAMMERS HOME OUR NEED TO HAVE

SERVICES OF COMPETENT COSTA RICAN COUNSEL AS SOON AS POSSIBLE. EMBASSY SIMPLY UNABLE TO ASSESS AT THIS TIME PROSPECTS FOR SUCCESSFUL LEGAL ATTACK ON CONSTITUTIONALITY OF EXTRADITION LAW WITHOUT A LOCAL LEGAL ADVISER--WHO OF COURSE AT SAME TIME WOULD BE SENSITIVE TO THE POLITICAL REALITIES OF THE SITUATION.

ALSO, AS INDICATED IN PARAGRAPH 6 ABOVE, WE WOULD NEED A JUDGMENT ON THE STRENGTH OF THE MOST RECENT INDICTMENTS TO BRING ABOUT A SUCCESSFUL EXTRADITION OF VESCO AND HIS ACCOMPLICES IN TERMS OF BOTH THE TREAT AND THE LAW. IN VIEW OF TIME FACTOR, EMBASSY NOW BELIEVES WE SHOULD PREPARE TO GO FORWARD WITH EXTRADITION REQUESTS FOR VESCO AND ASSOCIATES IF CHANCES FOR SUCCESS ARE REGARDED AS AT LEAST EVEN. THIS BRING US AGAIN TO NEED FOR COMPETENT LOCAL COUNSEL.

12. ACTION REQUESTED: ACCORDINGLY, EMBASSY REQUESTS AUTHORIZATION AND FUNDING TO EXPLORE CONTRACTING FOR SERVICES OF A LOCAL LAWYER--EVEN IF AT THIS PRECISE MOMENT WE ARE NOT PREPARED TO PRESENT AN EXTRADITION REQUEST. IF WE ARE, THEN IT IS ALL THE MORE URGENT.

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